

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 09-00320 WHA

Plaintiff,

v.

RENE NAVAREZ,

Defendant.

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY OF ORDER  
DENYING DEFENDANT'S MOTION  
UNDER SECTION 2255 AND  
DENYING REQUEST TO PROCEED  
IN FORMA PAUPERIS**

A recent order denied defendant's motion to vacate, set aside, or correct his sentence under Section 2255. A certificate of appealability is now requested. Pursuant to 28 U.S.C. 2253(c), a district judge may issue a certificate of appealability if the "applicant has made a substantial showing of the denial of a constitutional right." Where a district judge has denied a habeas petition on procedural grounds, without reaching the defendant's underlying constitutional claims, as here, the defendant must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Defendant has failed to make this showing. Consequently, a certificate of appealability is **DENIED**.

Defendant has also requested leave to proceed in forma pauperis, but has not submitted information in support of his request. The request to proceed in forma pauperis is **DENIED**,

1 without prejudice to resubmission with the appropriate materials. The Clerk shall serve this order  
2 on defendant.

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4 **IT IS SO ORDERED.**

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6 Dated: February 21, 2012.

  
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7 WILLIAM ALSUP  
8 UNITED STATES DISTRICT JUDGE  
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